October Term, [illegible]
No. [illegible]

Harsh Investment Corporation,

Petitioner,

vs.

Curtis B. Danning, Receiver, In Proceedings for an Arrangement under Chapter XI re: Walter Minskoff, Leo A. Minskoff, Jane Cherney Minskoff, Gertrude Minskoff, Debtors,

Respondents.

Respondents' Answering Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Gendel, Raskoff, Shapiro & Quittner, and
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IN THE

Supreme Court of the United States

October Term, 1969
No. 1606

HARSH INVESTMENT CORPORATION,

Petitioner,

vs.

CURTIS B. DANNING, Receiver; In Proceedings for an Arrangement under Chapter XI re: WALTER MINSKOFF, LEO A. MINSKOFF, JANE CHANEY MINSKOFF, GERTRUDE MINSKOFF, Debtors,

Respondents.

Respondents' Answering Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Question Presented.

Where prior to entry of an Order sustaining objections to a creditor's proof of claim, the creditors files a motion to reopen the objection to claim proceeding, which motion the Referee in Bankruptcy denies after entering the Order sustaining the objection to that creditor's claim, is the ten day time limit prescribed by Bankruptcy Act §39c (11 U.S.C. Section 67c) for filing a Petition for Review from the Order sustaining the objection to claim:

(1) Extended so as not to begin to run until entry of the Order denying the motion to reopen the objection to claim proceeding; or,

(2) Inelastic and not extended so that the Petition for Review, filed more than ten days after entry of the Order sustaining the objection to the creditor's claim, but within ten days of entry of the Order denying the creditor's motion to reopen the objection to claim proceeding, is late filed and must be dismissed.

Statute Involved.

Section 39c of the Bankruptcy Act (11 U.S.C. §67c) provides, in pertinent part:

> "A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten day period may for cause shown allow, file with the referee a petition for review of such order by a judge . . . Unless the person aggrieved shall petition for review of such order within such ten day period, or any extension thereof, the order of the referee shall become final. . . ."

Statement of the Case.

On March 4, 1965, the Minskoffs each filed individual Petitions for an Arrangement under Chapter XI of the Bankruptcy Act (11 U.S.C. §301 *et seq.*) and on March 12, 1965, the Referee in Bankruptcy sent a notice to all of the creditors, including Petitioner, who received same, advising all creditors that their proofs of claim must be filed within six months of April 5, 1965, namely, on or before October 5, 1965.

On February 24, 1967, approximately seventeen months after the claim filing period had expired, and approximately two weeks after the Minskoffs filed a proposed Plan of Arrangement, Petitioner filed with the Referee a document entitled, "Amended Proof of Claim".

On December 12, 1967, Respondent objected to Petitioner's "Amended Proof of Claim" on the grounds that said claim was not an amended claim and was not filed within the six month period prescribed by §57n of the Bankruptcy Act (11 U.S.C. §93n). In January, 1968, hearings were held on the objection to Petitioner's "Amended Proof of Claim", the Referee filed a Memorandum Opinion sustaining the objection, but no Order was entered until February 20, 1968. Notice of entry of the Order of February 20, 1968, was, on that date, sent by the Referee's clerk to all parties to the objection to claim proceeding, including Petitioner. A copy of that Notice of Entry of Order is appended hereto as Appendix I.

Rule 204(a) of the Bankruptcy Rules of the U.S. District Court for the Central District of California provides (and provided on February 20, 1968):

> "RULE 204, REVIEWS OF REFEREES' ORDERS.
>
> (a) An order of a referee shall be deemed entered when signed and filed with an appropriate filing mark in the referees' office. The referee shall upon filing of the order, give written notice by mail of the entry of the order to any party who has filed a written request therefor."

Although Petitioner filed no such written request with the Referee, Petitioner was given, on the date of entry, a notice of entry of the Order of February 20, 1968.

On February 8, 1968, twelve days prior to the entry of the Order sustaining the objections to Petitioner's "Amended Proof of Claim", Petitioner filed its application to reopen the objection to claim proceeding to amend its answer. On March 4, 1968, three calendar days after expiration of the time prescribed by §39c of the Bankruptcy Act (11 U.S.C. §67c), Petitioner filed a Petition for Review of the Order of February 20, 1968, which sustained Respondents' objection to Petitioner's "Amended Proof of Claim". The District Judge dismissed the Petition for Review as late filed and the Court of Appeals for the Ninth Circuit affirmed.

On March 12, 1968, the Referee filed his Memorandum Opinion and Order denying Petitioner's Application to reopen the objection to claim proceeding. Petitioner filed a separate Petition for Review, which was denied by the District Judge. A separate Notice of Appeal was filed from this latter Order, but the Court of Appeals for the Ninth Circuit, on Respondents' Motion, dismissed that appeal since the Order denying the Motion to reopen was a non-appealable Order. A copy of the Notice of Motion and the Opinion of the Court of Appeals for the Ninth Circuit thereon is appended hereto as Appendix II.

Reasons for Denying the Writ.

Petitioner urges granting the requested Writ since the Orders of the District Court and the Court of Appeals for the Ninth Circuit leave ". . . unanswered the

question presented whether [the] application to reopen . . . extend[ed] the time for filing the Petition for Review . . ." (Petition for Certiorari, p. 5). The key to this shallow argument is the word "presented". Both Courts below considered Petitioner's above stated contention and ruled that Petitioner failed to timely file its Petition for Review as required by §39c of the Bankruptcy Act (11 U.S.C. §67c). Thus, both Courts below clearly answered Petitioner's above stated contention in the negative and there is, therefore, no important question of Federal law not decided by the Courts below requiring this Court's action.

Petitioner asserts (Petition, pp. 5-6) that the July, 1960 amendment to §39c of the Bankruptcy Act (11 U.S.C. §67c) did not change the law with respect to a motion for rehearing extending the time for the filing of a petition for review, relying upon the cases of *Pfister v. Northern Illinois Finance Corporation,* 317 U.S. 144 (1942) and *Bowman v. Loperena,* 311 U.S. 262 (1940). Both cases were decided prior to the July, 1960 amendment to §39c of the Bankruptcy Act (11 U.S.C. §67c) and led to the enactment of that amendment. Petitioner fails to cite any post-1960 case which supports its theory, except for *United States v. Healy,* 376 U.S. 75 (1964), *a non-bankruptcy case* which, of course, did not deal with the 1960 amendment to §39c of the Bankruptcy (11 U.S.C. §67c). We will deal with these cases in order.

Bowman v. Loperena, supra, dealt with an untimely petition for rehearing of an order entered by the District Judge, and not by a Referee in Bankruptcy. Since appeals from the Orders of a District Judge in bankruptcy proceedings are governed by rules different from

those which govern Petitions for Review of the Orders of Referees in Bankruptcy, this case does not support Petitioner's position.

In *Pfister v. Northern Illinois Finance Corporation, supra,* untimely petitions for rehearing were followed by the filing of late petitions for review. The Court of Appeals affirmed that then §39c (11 U.S.C. §67c) governed, the time for review is not extended by the petitions for rehearing, there was no basis for reversing the Conciliation Commissioner's action on the petitions for rehearing and that the petitions for review were not filed timely. This Court upheld the Court of Appeals upon the first three grounds, affirmed the Judgment, but disagreed upon the last ground on the assumption that the language of the Court of Appeals meant that the District Court was "without power" to review the orders. Relying upon *Bowman v. Loperena, supra,* this Court ruled that the then §39c of the Bankruptcy Act (11 U.S.C. §67c) was not a limitation on the sound discretion of the District Court to permit the filing of petitions for review after the expiration of the prescribed time period but was, rather, a limitation on the person aggrieved to file such a petition as a matter of right. The section, as it then existed, provided for the filing of a petition for review of the order complained of ". . . within ten days after the entry thereof or within such extended time as the court may for cause shown allow, . . ."

Pfister thus destroyed the finality of referees' orders by subjecting them to late review. Congress, to eliminate this undesirable result and to make the ten day review time mandatory and exclusive, abrogated the *Pfister* and *Bowman* rule by amending §39c of the

Bankruptcy Act (11 U.S.C. §67c) in July, 1960 to make the referee's order final unless the aggrieved party files a petition for review within ten days of the entry of the order complained of, or within such ". . . extended time as the court upon petition filed within such ten day period may for cause shown allow, . . ." This amendment was recommended by the Judicial Conference of the United States, and the Senate Report said, in part:

> "There is now uncertainty as to the finality of a referee's order under this doctrine [*Pfister v. Northern Illinois Finance Corp.*] that a bankruptcy court may entertain an untimely petition for review even in the absence of an extension of time. The purpose of the bill is to fix a definite period of time within which an application for review must be filed.
>
> "The bill amends section 39c so as to make it clear that a petition for review must be filed within the prescribed 10-day period or within such extended time as the Court may allow upon petition for extension itself filed within such 10-day period."
>
> Senate Report No. 1689, 86th Congress, Second Session; 1960 U. S. Code Congressional and Administrative News, pp. 3194, 3195.

A fully copy of the above Senate Report is set forth in Appendix III.

Petitioner did not cite below, and has not cited in this Court, any bankruptcy case decided after the 1960 amendment to Section 39c of the Bankruptcy Act (11 U.S.C. §67c) in support of its theory that a motion to reopen extends the time within which to file a pe-

tition for review. *United States v. Healy, supra,* was a criminal case in which the Government filed a notice of appeal more than thirty days after judgment, but within thirty days after its motion for rehearing was denied by the District Judge. This Court held that the timely filed petition for rehearing, until disposed of by the District Court, rendered the judgment not final for purposes of appeal. This Court, then, as a dictum, stated that the rule was the same in civil appeals. However, we are not here dealing with an appeal, either civil or criminal, from the order of the District Judge, but rather with a petition to review the order of a Referee in Bankruptcy. We note also that *Bowman v. Loperena, supra,* dealt with a petition for rehearing of an order entered by a District Judge as extending the appeal time and was not concerned with a petition for rehearing of an order entered by a Referee in Bankruptcy or with a petition for review to the District Judge. Since appeals from the orders of a District Judge in bankruptcy proceedings are governed by rules different from those which govern petitions for review of the orders of Referees in Bankruptcy, neither *Bowman* nor *Healy* support Petitioner's contention.

Under Rule 4(a) of the Federal Rules of Appellate Procedure (28 U.S.C.) motions for rehearing and for new trials, if filed timely, toll the period within which a notice of appeal must be filed from an adverse order of the District Court. However, that Rule does not include petitions for review, but applies solely to appeals being perfected from an order of the District Court. While a "Court of Bankruptcy" includes the District Courts, a Referee in Bankruptcy is not a "Judge" and, though he may exercise certain powers of

a District Court, he is not the District Court. Review of the Referee's orders is by the District Judge pursuant to §39c of the Bankruptcy Act (11 U.S.C. §67c). Only after the District Judge enters his order on the review does the appellate procedure come into play.

Bankruptcy Act, Section 1(10) (20), 11 U.S.C. §1(10), (20);

Matter of Williams Supply Co., Inc., 77 F. 2d 909 (C.A. 2, 1935), cert. denied *sub nom. Witt v. Berman*, 296 U.S. 612 (1935);

2 *Collier on Bankruptcy*, 1011 (14th Ed.).

Appeals in bankruptcy are thus treated separately and differently from petitions for review and are governed by special rules. While the Federal Rules of Appellate Procedure (derived and removed from the former Federal Rules of Civil Procedure) are applicable to bankruptcy appeals, General Order in Bankruptcy No. 36 (28 U.S.C.) does not make the Federal Rules of Appellate Procedure (and heretofore did not make the Federal Rules of Civil Procedure) applicable to petitions for review to the District Judge from an order of a Referee in Bankruptcy. Rather, petitions for review of the Referee's Order were always, as they should be, and still are, governed solely by the provisions of §39c of the Bankruptcy Act (11 U.S.C. §67c).

Both by General Order in Bankruptcy No. 37 and Rules 81(a)(1) of the Federal Rules of Civil Procedure (28 U.S.C.), the Federal Rules of Civil Procedure (and to the extent that the Federal Rules of Appellate Procedure are derived therefrom) were never applicable in bankruptcy proceedings when inconsistent with the provisions of the Bankruptcy Act. Since present §39c

of the Bankruptcy Act (11 U.S.C. §67c) makes mandatory the ten day filing period for a petition for review and, failing such a filing, makes the order of the Referee in Bankruptcy final, any of the Federal Rules of Civil or Appellate Procedure, or the cases decided thereunder, not in a bankruptcy, which would otherwise extend that time, conflict with the provisions of §39c of the Bankruptcy Act (11 U.S.C. §67c) and do not apply to petitions for review from a Referee's order.

Note also that Petitioner filed its application to reopen the objection to claim proceedings on February 8, 1968, twelve days prior to the signing of the Referee's order sustaining the objection to Petitioner's "Amended Proof of Claim" and then, on March 4, 1968, three days late, Petitioner filed its petition for review of the order sustaining the objection to its late filed proof of claim. If, as Petitioner asserts, its application to reopen extended the review time, why did Petitioner file a petition for review at all on March 4, 1968, rather than waiting to file its petition for review until after the Referee's order denying Petitioner's application to reopen? Clearly, Petitioner did not rely on its application to reopen to extend the review time, but rather just filed its review late and is seeking to excuse its failure to file timely. Further, since a Referee's order is not reviewable until entered, Petitioner's application to reopen, filed prior to the signing and entry of the order sustaining the objection to Petitioner's late filed claim, could not extend the review time since it had not yet begun to run and there was nothing to review.

2 Collier on Bankruptcy, 1503 (14th Ed.);

In re DuPont, 290 Fed. 393 (D.C. Mass., 1923).

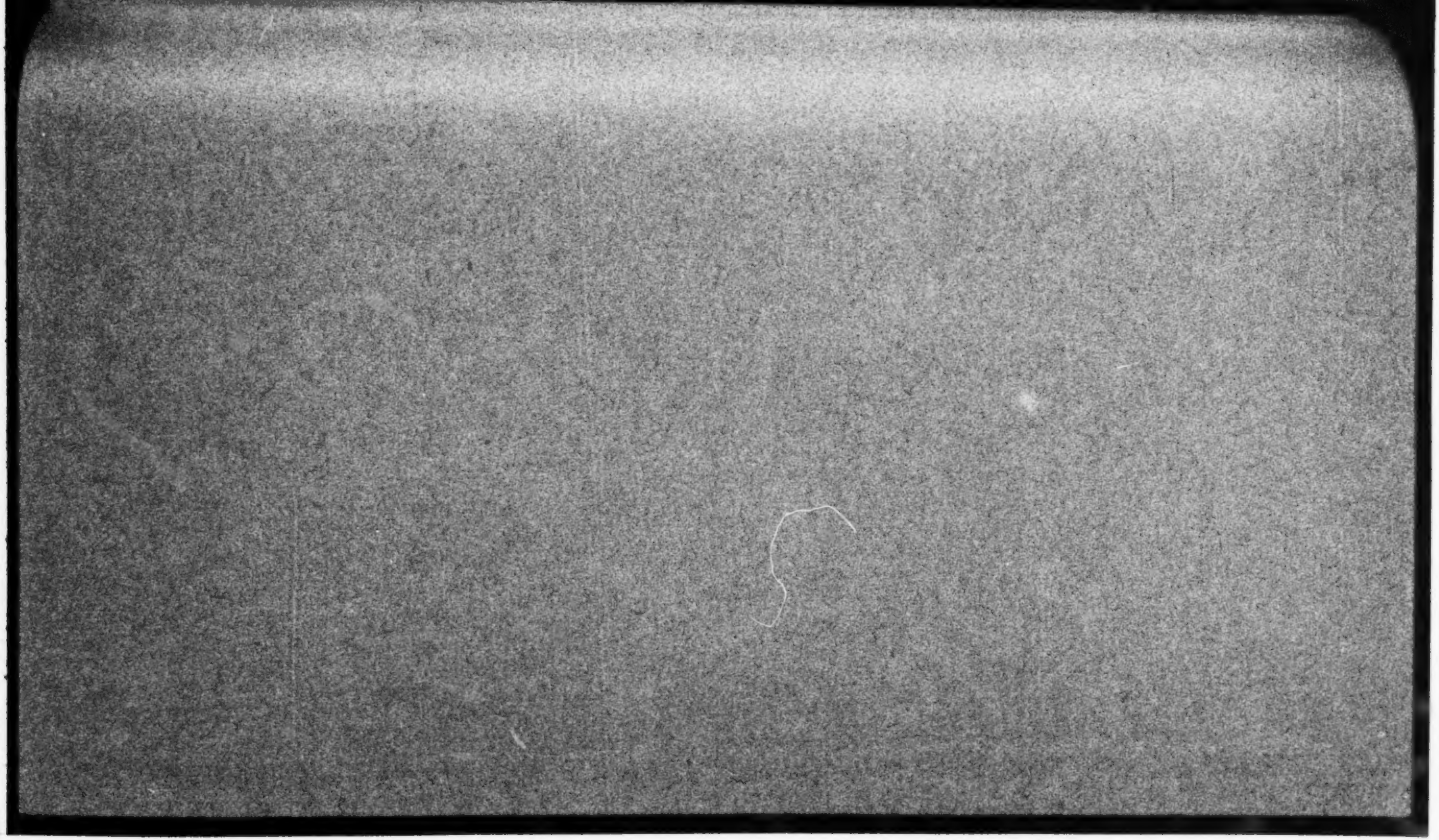
Conclusion.

The 1950 amendment to §39c of the Bankruptcy Act (11 U.S.C. §67c), expressed an intent by Congress that there be finality to bankruptcy litigation by making the Referee's order final unless a petition for review is filed within ten days of the entry of the order sought to be reviewed or an extension is obtained within that same ten day period. To permit the extension of this time limitation by the filing of a petition to reopen, support for which is not found either in the Bankruptcy Act or in the cases relating thereto, would forever leave the Bankruptcy Court to the mercy of the unsuccessful litigant who, so long as he could exercise his ingenuity to file such motions, would be able to fend off the ultimate result of the Referee's ruling. That result is neither called for nor reasonable.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

GENDEL, RASKOFF, SHAPIRO &
QUITTNER, and
NATHAN MARKOWITZ,
Attorneys for Respondent.



APPENDIX I.

Notice of Entry of Order.

United States District Court, Central District of California.

In the Matter of Walter Minskoff, Leo A. Minskoff, Jane Chaney Minskoff, Gertrude Minskoff, Debtors. No. 185,836, 185,837, 185,838 and 185,839.

TO: NAT ROSIN and COWAN & HARRIS
Suite 300
1813 Wilshire Boulevard
Los Angeles 57, California

GENDEL, RASKOFF, SHAPIRO & QUITTNER
8380 Wilshire Boulevard - 16th Floor
Los Angeles, California 90048

QUITTNER, STUTMAN, TREISTER & GLATT
639 South Spring Street, Suite 325
Los Angeles, California 90014

NOTICE IS HEREBY GIVEN of the entry of the following order:

Date of Entry	Description of Order	Remarks
Feb. 20, 1968	FINDINGS OF FACT AND CONCLUSIONS OF LAW RE RECEIVER'S OBJECTION TO "AMENDED PROOF OF CLAIM" OF HARSH INVESTMENT CORPORATION, etc.	As prepared by GENDEL, RASKOFF, SHAPIRO & QUITTNER,
Feb. 20, 1968	ORDER RE RECEIVER'S OBJECTION TO THE "AMENDED PROOF OF CLAIM" OF HARSH INVESTMENT CORPORATION, etc.	As prepared by GENDEL, RASKOFF, SHAPIRO & QUITTNER,

Dated: February 20, 1968.

/s/ Ray H. Kinnison
Referee in Bankruptcy

I hereby certify that the within notice was sent by me to the parties above named, by United States Mail, this 20th day of February, 1968.

/s/ Imogene D. Patton

APPENDIX II.

Appellee's Motion to Dismiss Appeals; Affidavit of Nathan Markowitz; Memorandum of Points and Authorities; Affidavit of Service.

In the United States Court of Appeals, for the Ninth Circuit.

Harsh Investment Corporation, Appellant, vs. Curtis B. Danning, etc., Appellee. No. 23028.

Harsh Investment Corporation, Appellant, vs. Curtis B. Danning, etc., Appellee. No. 23261.

Filed: Jan. 14, 1968.

To the Honorable Judges of the United States Court of Appeals, for the Ninth Circuit:

CURTIS B. DANNING, Appellee, through his counsel, Gendel, Raskoff, Shapiro & Quittner, by Nathan Markowitz, of counsel, respectfully moves this Court to dismiss the within appeals of Harsh Investment Corporation, Appellant, on each and all of the following grounds:

1. Appeal No. 23028.

   (a) This appeal is frivolous.

   (b) An Order denying an application to reopen proceedings or to file an amended or supplemental pleading, (or denying a petition for rehearing as Appellant now characterizes its application before the Referee in Bankruptcy) is not an appealable Order.

   (c) This Court is without jurisdiction to entertain this appeal since the Order which is the subject of this appeal:

      (1) Is not an appealable Order;

(2) Is reviewable only for gross abuse of discretion upon an appeal from the final judgment in the objection to claim proceeding in which it was made and that judgment is not appealable since Appellant's Petition for Review was filed late.

2. Appeal No. 23261.

(a) This appeal is frivolous since Appellant concedes the correctness of the Order of April 22, 1968, dismissing its Petition for Review as late filed.

(b) The 10 day filing requirement for a Petition for Review is mandatory and not extended by an application to the Referee in Bankruptcy either for rehearing, to reopen the proceedings or to file an amended answer.

WHEREFORE, Appellee respectfully moves that this Court, after appropriate hearing, dismiss both appeals herein and enter the proposed Order attached hereto.

DATED: January 10, 1969.

Respectfully Submitted,

GENDEL, RASKOFF, SHAPIRO & QUITTNER and
NATHAN MARKOWITZ
By: /s/ Nathan Markowitz
NATHAN MARKOWITZ
Attorneys for Appellee.

APPENDIX III.

Order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Before: ELY and HUFSTEDLER, Circuit Judges.

Upon consideration of appellee's motions to dismiss appeals, it is ordered that the motion to dismiss the appeal numbered 23261 is denied; that the motion to dismiss the appeal numbered 23028, a nonappealable order, is granted; and that the record heretofore filed in appeal numbered 23028 may be considered as a part of the record in appeal numbered 23261.

/s/ Walter Ely
/s/ Shirley Hufstedler
United States Circuit Judges

APPENDIX IV.

Bankruptcy—Review of Orders of Referees.

For text of Act see p. 602

Senate Report No. 1689, June 24, 1960 [To accompany H.R. 6556]

House Report No. 585, June 26, 1959 [To accompany H.R. 6556]

The Senate Report is set out.

Sentate Report No. 1689

The Committee on the judiciary, to which was referred the bill (H.R. 6556) to amend subdivision c of section 39 of the Bankruptcy Act (11 U.S.C. 67c) so as to clarify time for review of orders of referees, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of the bill, as amended, is to clarify the filing time for review of orders of referees in bankruptcy.

STATEMENT

The bill is recommended by the Judicial Conference of the United States.

Section 39c of the Bankruptcy Act (11 U.S.C. 67c) now provides:

> c. A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall

> set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest.

A failure to file a petition for review of a referee's order within the prescribed 10 days after the entry of the order has generally been held, unless an extension is granted, to be fatal to the petition for review.

The Supreme Court, however, has held that a bankruptcy court may, in its discretion, grant an extension even after the expiration of the 10-day period. The Court held (Pfister v. Northern Illinois Finance Corp., 317 U.S. 144, 153 (1942)) that although 39c limits an aggrieved party in seeking review as a matter of right after the 10-day period, it places no limitation upon the discretion of the bankruptcy court to entertain a petition for review after the expiration of that period.

There is now uncerainty as to the finality of a referee's order under this doctrine that a bankruptcy court may entertain an untimely petition for review even in the absence of an extension of time. The purpose of the bill is to fix a definite period of time within which an application for review must be filed.

The bill amends section 39c so as to make it clear that a petition for review must be filed within the prescribed 10-day period or within such extended time as the court may allow upon petition for extension itself filed within such 10-day period.

The amendment recommended by the Administrative Office of the U. S. Courts to the bill as passed by the House of Representatives provides further, for the pur-

poses of clarification, that unless the person aggrieved shall petition for review of such order within such 10-day period, or an extension thereof, the order of the referee shall become final.

The committee believes that the bill as passed by the House of Representatives and as amended for purposes of clarification, as recommended by the Administrative Office of the U. S. Courts, is meritorious and recommends it favorably.

Attached and made a part of this report are (1) a letter, dated April 16, 1959, from the Administrative Office of the U. S. Courts and (2) a letter, dated June 16, 1960, from the Administrative Office of the U. S. Courts.

Administrative Office of the U.S. Courts,
Washington, D. C., April 16, 1959.

Hon. Sam Rayburn,
Speaker, House of Representatives,
Washington, D. C.

Dear Mr. Speaker: There is transmitted herewith, on behalf of the Judicial Conference of the United States, a bill to amend subdivision c of section 39 of the Bankruptcy Act (11 U.S.C. 67c) so as to clarify the time for review of orders of referees.

An explanation of the proposed bill is attached. Representatives of this office will be glad to appear before the committee and to provide any further information which may be desired concerning the bill.

Respectfully,

Warren Olney III, *Director*.

Legislative History.

EXPLANATION OF PROPOSED BILL TO AMEND SUBDIVISION C OF SECTION 39 OF THE BANKRUPTCY ACT (11 U.S.C. 67) SO AS TO MAKE IT CLEAR THAT A PETITION FOR REVIEW BY ORDER OF REFEREE MUST BE FILED WITHIN THE PRESCRIBED 10-DAY PERIOD UNLESS TIME IS EXTENDED BY THE COURT

Subdivision c of section 39 now reads:

"c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest."

Subdivision c was added to section 39 by the Chandler Act of 1938 for the purpose of clearly outlining the procedure to be followed in obtaining a review of a referee's order, and in the interest of certainty and uniformity. Prior to the Chandler Act, the right to have orders of the referee reviewed by the judge was governed by General Order 27. Subdivision c incorporated into the act the essence of former General Order 27, which has been abrogated. It also was intended to remedy a previous deficiency in both the Bankruptcy Act

and the general orders in that a definite period of 10 days has been provided as the time in which to file a petition for review. General Order 27 contained no time limitation, though local rules in various districts prescribed a time within which the application must be filed. (See "Collier on Bankruptcy." 14th ed. vol. 2, sec. 39.16. See also "Remington on Bankruptcy," vol. 8, sec. 3406.)

Section 39c stipulates "ten days after the entry thereof" as the period within which a petition for review of a referee's order must be filed. Generally the failure to file within this time, unless an extension is granted, is fatal to the petition for review. However, in In re Steinberg (S.D. Calif. 1956) 138 F.Supp. 462), the court held that the expiration of the 10-day period does not preclude the court from entertaining a petition for review, having power to exercise its own discretion in the matter. The effect of the expiration of the 10-day period is only that a petitioner cannot have a review as a matter of right. (See "Collier on Bankruptcy," 14th ed. vol. 2, sec. 39.20, and the other cases cited under note 8.)

Uncertainty as to the finality of a referee's order now exists because of the holdings of some courts that a bankruptcy court may entertain an untimely petition for review, even in the absence of an extension of time. In view of this an amendment to section 39c is needed that will fix a definite period of time within which an application for review must be filed. The bill would amend section 39c so as to make it clear that the petition for review must be filed within the prescribed 10-

day period or within such extended time as the court may allow upon petition for extension filed within such 10-day period.

The Judicial Conference of the United States, at its meeting in March 1959, upon the recommendation of its Committee on Bankruptcy Administration, approved the proposed measure.

Administrative Office of the U. S. Courts,
Washington, D. C., June 16, 1960.

Hon. James O. Eastland,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D. C.

Dear Senator Eastland: At the direction of the Judicial Conference of the United States an amendment is recommended to H.R. 6556, to amend subdivision c of section 39 of the Bankruptcy Act to clarify the time for review of orders of referees. This bill passed the House on July 6, 1959, and is now pending before the Senate Judiciary Committee.

The Judicial Conference, at its September 1959 meeting, approved a recommendation of its Committee on Bankruptcy Administration that the bill as passed by the House be amended by inserting after the second sentence the following:

> "Unless the person aggrieved shall petition for review of such order within such 10-day period, or any extension thereof, the order of the referee shall become final."

The Judicial Conference also authorized the Administrative Office to present the amendment to the Senate Judiciary Committee. The Conference at its March 1960 meeting reaffirmed its approval of the bill with the amendment. Therefore, it is asked that the bill be so amended and enacted into law.

Sincerely yours,

Edwin L. Covey,
Chief of Bankruptcy.